

SUBJECT: Search and Seizure	NUMBER: 2-1.02
EFFECTIVE DATE: June 14, 2016	REVIEW DATE:
NMMLEPSC STANDARDS: ADM.02.03	APPROVED: Sheriff

I. POLICY

The department shall utilize standardized procedures in the preparation, execution, and return of search warrants, to ensure the rights of the citizens of the County, the effectiveness of the operation, and the safety of personnel.

The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, persons and things. The Supreme Court is continuously interpreting the Fourth Amendment as it applies to police conduct.

II. SEARCHES

A. There are three types of authorized searches that may be conducted.

1. A search authorized by a valid search warrant.
2. Consent to search.
3. Warrantless search.

Whenever a deputy conducts a search other than an authorized warrantless, or consent search, he will obtain a warrant for the search of the person or premises prior to commencing the search.

Police action is termed a search where (1) there is a "prying into hidden places by the peace officer" and (2) the person whose premises or person is being searched has a reasonable expectation of privacy.

B. Probable cause

Probable cause is deemed as facts and circumstances that are enough to satisfy a person of ordinary caution that a crime has been committed, or is being committed, that the particular thing to be seized in a search is reasonably connected to a crime, and that it can be found at a particular place.

1. Probable cause is more than bare suspicion.
2. Only a probability of criminal conduct need be shown.

3. According to the Supreme Court, "Probable cause exists where the facts and circumstances within the deputies knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed."

III. SEARCH WITH A WARRANT

A. Approval of warrant - After the affiant has completed the affidavit, the following steps have to be followed to have the warrant approved:

1. Present the affidavit to the appropriate supervisor for approval.
2. Take the affidavit to the district attorney's office for review.
3. Take the affidavit to a magistrate or district court judge for review and authorization. District court approval should be used primarily for cases that have a high likelihood for federal prosecution. Searches that are out of local jurisdiction will be approved by a district court judge. District court judges may be used on case by case basis with a supervisor's approval.

B. A department supervisor must be present when department personal are serving/executing a search warrant.

1. Supervisors may in some cases authorize deputies to execute search warrants without supervisor being present.

This shall be limited to the following instances:

- a) When a search warrant is being executed on a vehicle which has been taken to a storage facility, such as a towing yard.
- b) When a "body warrant" is being executed on a person for forensic evidence such as hair, bodily fluids, etc.
- c) At the discretion of a supervisor.

2. Supervisors will also ensure that at least one uniformed deputy with a marked unit is present at the time the warrant is executed. Supervisors may authorize searches without a uniformed deputy or marked unit is a case by case basis.
3. Any search warrant being conducted outside of the County of Valencia the local jurisdiction must be notified prior to the search being executed.

C. Documentation

1. Photographs of the property searched will be made prior to and after the search.
2. A complete inventory off all items being seized will be made.

3. Provide a copy of the search warrant affidavit, warrant, and inventory of seized items to the defendant or his representative if present, or leave a copy within the premises along with a copy of the inventory of all items that were seized.
4. The return of the warrant, affidavit, and inventory of seized items will be filed with appropriate Court clerk in which the warrant was obtained within three (3) working days of the execution of the warrant.

D. When executing a search warrant on residential or commercial property all deputies involved in the execution of the warrant will utilize a recorder (audio or video) while securing the property. The service of the search warrant and inventory of seized items to the property owner will also be recorded.

E. If during the search of property items of contraband or evidence of other crimes is found the search of the property will immediately stop. The case agent and supervisor will discuss the items in question and if criminal charges of the new items could occur or if the item found is not on the current search warrant a secondary warrant for those items found will be obtained prior to resuming the search.

IV. CONSENT SEARCH

- A. A search warrant is not necessary where a person who has authority or control over the thing or place searched consents to the search. The sole justification for a consent search is the existence of voluntary consent.
 1. Consent searches must observe the following rules:
 - a) Generally, the person granting consent must use, have access, or control of the property. A person having exclusive possession of some part of jointly-owned property can only give consent for a search of that part.
 - b) If two people have joint ownership of property, either may only give consent for search of common areas and their personal property.
 - c) A landlord, including a hotel or motel manager, cannot consent to a search of a tenant's premises, unless the tenant has been evicted or has abandoned the property.
 - d) A husband or wife, or one member of a cohabiting unmarried couple, may consent to a search of areas in common ownership or use.
 2. Consent must be given knowingly, initially and voluntarily. If a deputy requests consent from an individual under circumstances which a reasonable person would consider coercive, then deputies must seek a warrant. The deputy may have the burden of demonstrating voluntary consent.
 3. Deputies must ensure the person giving consent is in a physical position to withdraw consent from the searching deputy, should they decide to withdraw consent at any time during the search.

4. Obtaining a consent search must be recorded either by audio or video recording. A written consent may also be obtained along with the recording.

V. WARRANTLESS SEARCH

A. As a general rule, a search must be supported by a valid warrant or consent to search authorization. In some cases there are special exceptions to the rule. Deputies having questions on whether a warrantless search would be legal, should contact their supervisor, or consult with the on-call Assistant District Attorney for advice. The following are the exceptions authorized by this agency:

1. Search incident to an arrest - Incidental to a valid arrest, a warrantless search of the arrested person at the time and place of his arrest will be made. The area into which the arrestee might reach for a weapon or to destroy evidence will also be searched.
2. Plain view - Deputies may, without a warrant, seize items unexpectedly found in plain view at the time of an arrest, and/or if the items are evidence of a crime and it is impractical to first obtain a warrant.
3. Hot pursuit - If a deputy is pursuing a person and the deputy has probable cause to believe the person is armed, and has just committed a felony crime, the deputy may for the purpose of his/her safety, the safety of the public, and the prevention of escape, search the building into which the person has been pursued.
4. Open fields - Under the "open field" doctrine, a deputy may enter and search any unoccupied or undeveloped area that lies outside the "curtilage of a dwelling".
5. Public places - There is no requirement that a deputy obtain a warrant before seizing things brought into public places, open to public view.
6. Emergency searches exigent circumstances - Deputies may make a warrantless entry of anything, whether personal belongings, a vehicle, or building, anytime that the deputies have good reason to believe it is necessary to save a life or prevent injury (i.e., cries for help from the inside of a building, assisting the fire department on a fire, to check on the welfare of the suspected abused child). However, once the emergency has passed, deputies may not continue to search without first obtaining a warrant.
7. Abandoned property - Deputies may, without warrant, seize and search property that has been abandoned. To be considered abandoned property it must be voluntarily abandon and it was discarded outside and area in which someone has a reasonable expectation of privacy.
8. Inventories of vehicles – Deputies are required to inventory any lawfully impounded vehicle or a vehicle removed from the streets and placed into department custody. The

purpose of an inventory is to ensure safekeeping of private property and to protect the department from liability. If evidence of contraband is found during the inventory, the deputy should stop the inventory and obtain consent or a warrant before continuing.